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Apple NAFTA Panel Orders Economia to Deliver Final Verdict

Report Categories:

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Agriculture in the News

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Report Highlights:

The NAFTA Panel responsible for deciding the apple anti-dumping case recently informed the Secretariat of Economy (SE) that the SE should deliver its final determination by January 15, 2010, and use the data already contained in the files. This declaration follows a November 4, 2009, announcement from the SE that it would inform participants of the final outcome on March 1, 2010, using revised data. According to the announcement, the Panel was not pleased with the SE's decision to use a later date or alternative data, and ordered the government to publish an immediate

notification in the *Diario Oficial* (Official Register) indicating that no extension or data change would be granted. Originally, the NAFTA Panel asked the SE to reissue its final determination complying with the panel's data requirement on December 15, 2009. (For information on each announcement, please see GAIN Reports: MX9089, MX9086 and MX9074.)

General Information:

This report summarizes an announcement concerning the final decision of the NAFTA Panel regarding the antidumping investigation on imports of apples from the United States. This is the third different announcement that sets different dates and data requirements from the GOM since October 15, 2009.

Disclaimer: This summary is based on a *cursory* review of the subject announcement and therefore should not, under any circumstances, be viewed as a definitive reading of the regulation in question, or of its implications for U.S. agricultural export trade interests. In the event of a discrepancy or discrepancies between this summary and the complete regulation or announcement as published in Spanish, the latter shall prevail.

Title: Final Decision of the Review Panel on the Final Resolution of the Antidumping Investigation for Importation of Red Delicious Apple Varieties, their Mutations, and Golden Delicious Apples, and Merchandise Classified under the Tariff Number 0808.10.01 of the General Duties of the Import and Export Tariff Law, Originating in the United States, Independent from the Country of Origin.

Executive Summary: On November 4, 2009, the SE announced in the *Diario Oficial* (Federal Register) the NAFTA Panel's decision regarding the anti-dumping investigation on apples imports from the United States (please see report MX9086). The NAFTA Panel ruling requested the SE to prepare a new determination by December 15, 2009. Specifically, the SE was required to reissue a new final determination considering data that focuses only on information from 2004-05 as indicated by the Secretariat in the Preliminary Investigation of September 29, 2005 (please see report MX9089).

However, on November 13, 2009, the SE notified all of the parties involved in the resolution that a final decision would not be reached by December 15. Instead, the SE would issue a determination by March 1, 2010, and the anti-dumping duty would still apply until a decision was made. According to sources, this announcement was unacceptable by the NAFTA Panel since it did not comply with the findings or date set by the NAFTA Panel. The SE is now required to submit its findings by January 15, 2010, using data contained in previous announcements.

According to the Panel's decision, official authorities must issue the new determination based on the following data:

- SE must base its determination on information and data contained in the files only.
- The SE must provide the percentage of the domestic production in question that was considered for analysis in case the SE determines positive injury findings.
- The SE must provide a justification if it chooses to exclude data from certain months, as established in the Preliminary Resolution, or includes producers that are also importers of

apples.

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Useful Mexican Web Sites:

Mexico's equivalent of the Secretariat of Agriculture, SAGARPA, can be found at www.sagarpa.gob.mx and Mexico's equivalent of the Secretariat of the Economy can be found at www.se.gob.mx.